SUPREME COURT OF THE UNITED STATES.

Nos. 29 and 30.—October Term, 1926.

Steamship "Willdomino," her engines, boilers, etc., Petitioner, vs. Citro Chemical Company of America.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
Steamship "Willdomino," her engines, boilers, etc., Petitioner, vs. Charles Pfizer & Company, Inc.	

[January 3, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

Respondents instituted proceedings *in rem* against the "Willdomino," a British vessel, to recover the value of five hundred and three (168 and 335) casks of citrate of lime owned by and consigned to them, which she accepted June 10, 1920, at Messina, Sicily, for delivery at New York, subject to issued bills of lading. After leaving Messina the vessel put in at Gibraltar, Lisbon, Ponta Delgada (The Azores), North Sydney (Nova Scotia) and Halifax. While passing between the last-named ports, through negligent navigation, she struck a reef or submerged object; water filled her forward compartment and respondents' goods were so damaged that they refused acceptance at destination. The causes were heard upon the same record and present identical questions. In the District Court petitioner prevailed; but the Circuit Court of Appeals thought otherwise and entered judgments for the damages sustained. 300 Fed. 5.

The petition for certiorari alleges that the causes involve three questions—

1. When in normal condition citrate of lime contains sixty-four per centum of citric acid; the cargo offered for delivery at

New York contained sixty per centum of citric acid. Was it in sound condition?

2. Having regard to the bills of lading, did the "Willdomino" deviate when she went to North Sydney?

3. Must there be causal connection between the lack of due diligence to make a vessel seaworthy and the accident from which damage results in order to deprive the vessel of the exemptions granted by Section 3 of the Harter Act?*

We confine our consideration to the points specified by the petition and agree with the conclusions of the Circuit Court of Appeals concerning the essential facts, although they are radically different from those of the trial court. It is unnecessary now to discuss the evidence—that was adequately done below.

The first of the above-stated questions has not been pressed here and is either abandoned or inconsequential.

The Circuit Court of Appeals, we think, rightly held that the "Willdomino" made an inexcusable deviation from the permitted course when she went to North Sydney. Consequently, she became liable as an insurer for any damage suffered by the cargo. *St. Johns Corp.* v. *Companhia Geral, etc.*, 263 U. S. 119, 124; *The Citta di Messina*, 169 Fed. 472, 474, 475; *The Sarnia*, 278 Fed. 459.

Except as to inserted name of the consignee and number of casks the printed bills of lading were identical. They acknowledge receipt of ". . . casks citrate of lime" "for shipment, in apparent good order and condition, from Ferd. Baller & C., to be transported by the good Steamship Willdomino to New York, with liberty to call at intermediate ports or any port or ports in or out

*"SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service." Act of February 13, 1893, (the Harter Act) c. 105, 27 Stat. 445.

of the customary route in any order, to receive and discharge coal, cargo, passengers, and for any other purposes." And they provide: "The ship has liberty of filling up and/or bunkering at any port or ports in or out of the way." "Filling up only in ports on the way westwards of New York," is written at the bottom of each bill, and all agree that *of* therein really means *to*.

The "Willdomino" left Messina with five hundred and sixty-nine tons of coal—not sufficient under any circumstances to carry her to New York. At Gibraltar, a customary coaling port, she took on four hundred tons and left there for Lisbon with seven hundred and fifty-six tons in her bunkers. From Lisbon she cleared for New York—two thousand, nine hundred and five miles away—with but six hundred and fifty-one tons, an inadequate amount. When five days out from Lisbon an accident befell the high-pressure turbine and she put into Ponta Delgada for repairs. Finding that port not properly equipped therefor, the master decided to proceed on the low-pressure turbine alone. She took on two hundred and fifty tons of coal and cleared for New York—two thousand, two hundred and ninety miles—with six hundred and twenty-nine tons on board. This was grossly inadequate for that distance, as her officers knew. After proceeding five or six days toward New York it became manifest that there was not enough coal to make that port and thereupon she radically changed her course and proceeded to North Sydney, where she arrived with sixty-two tons.

It is clear enough that for some reason not quite definitely disclosed the officers of the vessel under direction of the owners, while realizing that there was not enough coal on board for such voyage, wished to create the impression that she left Ponta Delgada bound directly for New York, when in truth they intended to take her to North Sydney under pretense of an emergency.

In such circumstances by proceeding for five or six days in the direction of New York the vessel deviated from any permissible course to North Sydney, even if it be true, as her counsel now maintain, that she had the right to go and intended to proceed to the latter port from Ponta Delgada.

If, on the other hand, the vessel started from Ponta Delgada with the intention of going to New York, the only emergency claimed to justify departure from the ordinary course and pro-

cedure to North Sydney arose from wilful failure to take on sufficient coal.

An emergency sufficient to excuse a departure cannot arise out of circumstances deliberately planned nor from gross negligence.

Whether the intention was to proceed directly from Ponta Delgada to New York, as counsel for the petitioner are said to have maintained below, or to North Sydney, as they now insist, there was inexcusable departure.

"In the law maritime a deviation is defined as a 'voluntary departure without necessity or any reasonable cause from the regular and usual course of the ship insured.'" *Constable* v. *National Steamship Co.*, 154 U. S. 51, 66. "The voyage must be prosecuted without unnecessary delay or deviation. The shipowner's undertaking is that he will be diligent in carrying the goods on the agreed voyage and will do so directly without any unnecessary deviation." *Carver on Carriage of Goods by Sea,* 6th Ed., 393.

Nothing in the present bills of lading suggests that the vessel might wander about the sea, heading first for one port, and then without adequate reason for another. If the "Willdomino" had the privilege of going from Ponta Delgada to North Sydney and intended so to do, it was her duty to take the ordinary course. This she did not do.

What has been said of the second question renders it unnecessary to discuss the third.

The decrees of the Circuit Court of Appeals are

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.